

ILLINOIS POLLUTION CONTROL BOARD
October 17, 1980

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ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 79-200
)
LINDELL MINOR, et al.,)
)
Respondents.)

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MS. CHRISTINE ZEMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MESSRS. JOSEPH W. HICKMAN, ATTORNEY AT LAW AND TERRENCE J. HOPKINS, STATES ATTORNEY OF FRANKLIN COUNTY, APPEARED ON BEHALF OF RESPONDENTS.

ROGER L. RINNE, JERRY WIGGS, JOHN HENDERSON AND LARRY HENDERSON APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by D. Satchell):

This matter comes before the Board upon a complaint filed September 26, 1979 by the Environmental Protection Agency (Agency) naming as Respondents Lindell Minor and three others. Two subsequent amended complaints added five additional Respondents. The eleven counts of the second amended complaint allege violations of Sections 21(b) and 21(e) of the Environmental Protection Act (Act), Rule 301 and other rules of Chapter 7: Solid Waste Management (Rules) in connection with the operation of a landfill in Franklin County. On June 27, 1980 a public hearing was held in Benton at which time the parties outlined a settlement agreement. Members of the public did not attend and the Board has received no public comment.

The following persons have been named as Respondents in the second amended complaint:

Lindell Minor (Minor)	Owner of property on which the landfill is situated.
Jerry Wiggs (Wiggs)	Original holder of permit no. 1975-10-OF issued on June 12, 1975 authorizing operation of solid waste management site.
S & L Sanitation, Inc. (S & L)	A Missouri corporation authorized to do business in Illinois, now bankrupt.

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Roger L. Rinne (Rinne)	President and director of S & L
Larry G. Henderson (L. Henderson)	Secretary, treasurer and director of S & L
John C. Henderson (J. Henderson)	Vice-president and director of S & L
Noble Risley, Jr. (Risley)	Present holder of permit no. 1975-10- OP transferred from Wiggs to him on November 19, 1979
Robert Beatty (Beatty)	An individual sometimes doing business with Risley as Beatty and Risley Bull- dozing, a partnership or corporation located in Sesser
County of Franklin (County)	A party to various written contracts with Respondents for refuse disposal services including operation of the site

Ten of the eleven counts of the second amended complaint allege that various Respondents have at various times at the landfill site violated Section 21(b) of the Act and Rule 301 as well as more particular rules found in Chapter 7. Section 21(b) provides that no person shall cause or allow the open dumping of refuse in violation of regulations adopted by the Board. Rule 301 provides that no person shall cause or allow the operation of a sanitary landfill unless each requirement of Part III of Chapter 7 is performed. The more particular allegations of the complaint are summarized as follows:

<u>Count</u>	<u>Rule</u>	<u>Summary</u>
I	305(a)	Daily cover--a compacted layer of at least six inches of suitable material on all exposed refuse at the end of each day of operation.
II	305(c)	Final cover--not less than two feet not later than sixty days following the placement of refuse in the final lift.
III	303(a)	Unloading--refuse shall be deposited in the toe of the fill or the bottom of the trench.

IV	303(b)	Spreading and compacting--as rapidly as deposited, all refuse shall be spread and compacted into layers not to exceed a depth of two feet.
V	306	Litter--all litter shall be collected from the site by the end of each working day and either placed in the fill or stored in a covered container.
VI	314(e)	Leachate control--no person shall cause or allow the development of a sanitary landfill which does not provide adequate measures to control leachate.
VII	304	Sufficient equipment--personnel and equipment to ensure that operations comply with the permit, Act and Rules.
VIII	314(f)	Operation without adequate measures to control dust and vectors.
IX	302, 317	Quarterly water monitoring data as required by permit.
X	308	Scavenging operations at a sanitary landfill site.
XI	Section 21(e) 202(b)(1)	Conducting refuse collection or disposal without a permit from the Agency.

After the hearing the parties filed on August 22, 1980 a stipulation and two proposals for settlement. The stipulated facts are summarized below. The references are to paragraph numbers in the stipulation.

Respondent Minor is the owner of property used as a solid waste management site located west of Benton in the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 23, T. 6 S., R. 2 E., 3 PM, Franklin County (#2). Parts of the site were leased to various operators who conducted landfill operations under contract with County. The history of the site is divided into three parts corresponding to the contracts with Wiggs, S & L and Risley and Beatty.

Wiggs/County contract: On July 8, 1974 Wiggs entered into a written contract under which he was to provide County with refuse disposal services, including operation of the site, for the

period from August 1, 1974 until July 31, 1977 (§11). On August 1, 1974 Minor leased the site to Wiggs for a three year period (§13). From August 1, 1974 until on or about November 1, 1978 Wiggs operated a refuse disposal or solid waste mangagement site there. At first Wiggs was alone but later he operated in conjunction with S & L by oral or written agreement (§14). On June 12, 1975 the Agency issued to Wiggs permit no. 1975-10-OP for the site (§3).

The Wiggs/County contract provided for a \$50,000 performance bond posted with the County. Wiggs was to operate in compliance with state regulations and was to obtain permits. The County was authorized to take corrective measures if regulations were violated and was authorized to deduct the expense from the contractor's monthly payment (§12).

S & L/County contract: Minor leased the site by verbal or written agreement to S & L beginning on about October 28, 1976 (§17). The County and S & L entered into a written contract for refuse disposal services, including operation of the site for the period from March 1, 1977 through February 28, 1978 (§15). From on or about October 28, 1976 until on or about November 1, 1978, S & L operated a solid waste management site and a refuse disposal operation at the site (§18).

On each day during this period refuse was received at the site and disposed of by S & L without a permit issued by the Agency (§42). In December 1977 the County withheld for nonperformance \$5500 in payments otherwise due S & L under terms of their contract. In addition, the County has withheld S & L's security of \$7600 along with accumulated interest based on S & L's nonperformance (§46).

The S & L/County contract provided that the site would be operated in compliance with Illinois law. S & L was responsible for obtaining permits. Notice of deficiencies resulting from inspection were to be given to the contractor for corrective measures. The County was empowered to hire a third party for work involved in corrective measures. The resulting expense was to be deducted from the contractor's monthly payment. The contract provided for a "proposal guarantee" to be held in lieu of a bond. Failure on the part of the contractor to do the work as specified in the contract was to be considered as just cause to forfeit (§16).

Risley and Beatty/County contract: On December 21, 1977 Minor agreed with Risley for lease of the site to Risley and Beatty Bulldozing for a period of three years from March 1, 1978

to March 31, 1981 (§21). On January 11, 1978 County entered into a contract with Risley and Beatty Bulldozing for the latter to provide County with refuse disposal service including operation of the site for the period of March 1, 1978 through March 31, 1981 with a three year option to renew (§19). On March 1, 1978 Risley and Beatty begin operating on the portion of the site which neither S & L nor Wiggs had operated, located east of the on-site road. S & L continued to manage the western portion of the site until November 1, 1978 (§22). After November 1, 1978 Wiggs and S & L ceased to operate on the site (§§14, 18, 22, 42).

The Risley and Beatty contract provided that the site was to be operated in compliance with Illinois law. The County was empowered to make corrections with their own equipment or to hire a third party to do the work in the event suitable corrective measures were not taken within the appropriate time and to charge the cost to the contractor's account (§20).

On September 6, 1979 S & L was adjudicated bankrupt (§4). On November 19, 1979 the Agency transferred from Wiggs to Risley permit no. 1975-10-OP (§8).

On April 15, 1980 Beatty's interest was transferred to Ricky W. Benedict (Benedict) (§9). On the date of the hearing Risley and Benedict were operating the site as Risley and Benedict and Sons (§10). From November 1, 1978 to the present Risley and Beatty or Benedict have operated on the entire site. The site known as the Franklin County Landfill closed on July 30, 1980.

In addition to the stipulation, the parties have presented two proposals for a settlement. The first is signed by the Agency and Wiggs, S & L, Rinne, and L. and J. Henderson. Wiggs admits the violations of Counts I through XI of the second amended complaint but the parties agree that no penalty will be assessed against him.

Rinne and the Hendersons admit that they were officers and directors of S & L during the period of its operation of the site and admit that violations occurred as alleged during that period. S & L admits the violations as charged against it in Counts I through XI of the second amended complaint. The Agency has agreed that no penalty will be assessed against S & L, but that the approximately \$13,000 in payments and security withheld from S & L by the County will be retained by the County to insure proper closure. The complaint is to be dismissed with respect to Rinne and J. and L. Henderson.

The second proposal for settlement is signed by the Agency and Minor, Risley, Beatty and County. These Respondents admit the violations as charged against them in Counts I through XI of the second amended complaint. These Respondents agree to cease and desist from further violations of the Act and Board Rules. The parties have agreed to a detailed compliance plan. The plan includes an eighteen day extension from the plan outlined at the hearing because of the heavy storms of June 29 and July 2.

Respondents County, Minor, Risley and Beatty agree to the placement of final cover by midnight, August 18, 1980 on the east part of the site; on the entire operated area south of the base line; and over the tires. They also agree to grade and compact the slopes of the drainage way in the east part of the site by that same time. County agrees to bring that area of the site located west of the haul road and north of the base line used in the application for supplemental permit no. 79-2628 into compliance with the final cover requirements by October 18, 1980.

If Respondents Risley, Beatty and Minor complete the final cover and compacting work by the time agreed the County will pay to Risley and Beatty the balance of money withheld from S & L and the \$23,000 security deposit provided to the County by Risley and Beatty under the terms of their contract. If the work is not completed by that time, the money will be withheld and the County will contract the work, using the monies withheld as payment. No civil penalty is to be assessed against County, Minor, Risley or Beatty.

The Board notes that S & L Sanitation and some of the individual Respondents have been involved in other enforcement actions involving similar allegations (PCB 74-419, May 22, 1975, 17 PCB 103; PCB 79-76, January 24, 1980, 37 PCB 197; and PCB 79-77).

The Board also notes that the settlement proposal is signed by a person representing S & L which is in bankruptcy. Since the agreement is regular on its face, the Board will assume that there is proper authorization from the bankruptcy court for disposition of the assets of S & L held by County. The Board notes that the agreements, by Minor, Risley, Beatty and County to close the site, and by the County to act if the others fail, are unconditional. In view of this the Board finds the settlement acceptable (Procedural Rule 331). If the provisions of the agreement with respect to use of the performance bonds prove unenforceable it will not excuse the various parties from their agreements to bring the site into compliance.


This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. Respondents Lindell Minor, Jerry Wiggs, S & L Sanitation, Inc., Noble Risley, Jr., Robert Beatty and the County of Franklin have violated Sections 21(b) and (e) of the Environmental Protection Act and Rules 202(b)(1), 301, 302, 303(a), 303(b), 304, 305(a), 305(c), 306, 308, 314(e), 314(f) and 317 of Chapter 7: Solid Waste Management, substantially as alleged in Counts I through XI of the second amended complaint.
2. The complaint is dismissed with respect to Respondents Roger L. Rinne, Larry G. Henderson and John C. Henderson.
3. No monetary penalty is assessed against any Respondent.
4. Respondents Lindell Minor, Noble Risley, Jr., Robert Beatty and County of Franklin shall cease and desist violating the Act and Chapter 7: Solid Waste Management.
5. Respondents shall carry out their obligations under the proposals for settlement filed August 22, 1980 which are incorporated into this Order.
6. The motion for leave to file second amended complaint is granted.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 17th day of October, 1980 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board